IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3028 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASUEV MANHARDAS VAISHNAV

Versus

CHAIRMAN

Appearance:

1. Special Civil Application No. 3028 of 2003

MR NALIN K THAKKER for the Petitioner

MR NIKHILESH J SHAH for Respondent No. 1

MR SN SHELAT, ADVOCATE GENERAL with Ms M.D. MEHTA, AGP, for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 01/07/2004

ORAL JUDGEMENT

The petitioner, along with his family members, was one of the owners of land bearing survey No. 2221 situated at Anjar. The said plot of land admeasured 139.01 sq.mtrs. According to the petitioner, on the said plot, he was having a residential house of his family and he was also having a temple with three different idols, namely, of Shri Satyanarayan, Shri Ram & Sita and a Shivling.

2. It is the case of the petitioner that in pursuance of implementation of Town Planning Scheme No. 3 of Anjar City, the said survey number was made Original Plot No. 406 and ultimately it was reconstituted into Final Plot No. 406 admeasuring 125.02 sq.mtrs. As a result of the scheme, the size and shape of the plot has been substantially changed and the petitioner has been aggrieved by the change. The petitioner has, therefore, prayed in this petition that no change should be effected in his plot or alternatively, F.P. No. 391, which abuts F.P. No. 406, be granted to the petitioner and no part of the land, where the temple is situated, be taken away from him.

3. Learned advocate Shri Nalin Thakkar appearing for the petitioner has submitted that the temple is 300 years old and is having great religions and historical importance. According to him, approximately 2500 followers of Ramanandi Sampraday visit the temple regularly and about 16 different religious festivals are celebrated there every year. Moreover, very often discourses are being delivered by religious heads or preachers at the said temple. It has been, therefore, submitted by him that such a place of great religious importance should not have been disturbed in pursuance of the town planning scheme made by respondent No. 1.

4. It has been submitted by the learned advocate that the power given to the authority under the Gujarat Town Planing and Urban Development Act, 1976 (hereinafter referred to as 'the Act') is also coupled with a duty to see that the power is exercised properly and in accordance with the provisions of the Act. It has been submitted by him that in this case the power has not been exercised properly and in the matter of reconstitution of final plots, the respondent authorities have acted arbitrarily and without showing any sympathy for the earthquake affected people of Anjar.

5. It has been further submitted by the learned advocate that basically the scheme has been framed for

the purpose of rehabilitation of earthquake affected people of Anjar. According to him, the respondent authorities have started demolishing buildings belonging to residents of Anjar in pursuance of the town planning scheme. It has been submitted by the learned advocate that the scheme is not for town planning but it is only for rehabilitation and, therefore, the respondent authorities are not justified in making any changes in the shape and size of the plots, which the residents of Anjar were having. By doing so, it has been submitted by the learned advocate that the respondent authorities are putting the residents of the city of Anjar to further difficulties.

6. The learned advocate has submitted that in the plot, which the petitioner was having, not only a temple but a residential house was also constructed by him and his family members. The said house has been completely demolished due to the earthquake, which had taken place on 26.1.2001. It has been submitted by him that because of the change in the size and shape of the final plot allotted to the petitioner and his family members, it would be difficult for the petitioner to have a residential house in the plot without disturbing the idols. It has been submitted that it is very important to have a residential house in the plot because the petitioner is having his temple and idols of gods on the land in question. If nobody resides in the plot, there are all chances that somebody might damage the idols or commit theft of the ornaments, etc. adorning the idols particularly in view of the communal problems prevailing in the state. It has been, therefore, submitted that the planning is defective because a plot suitable for construction of a residential house has not been allotted to the petitioner.

7. It has been further submitted by learned advocate Shri Thakkar that on the southern side of the plot belonging to the petitioner, there is a final plot bearing No. 391. According to the petitioner, the owner of the said plot has died without leaving any heir. In the circumstances, it is the case of the petitioner that the said plot be also allotted to him on conditions which might be imposed by the respondent authorities. It has been submitted that if the said plot is allotted to the petitioner, much of the difficulties faced by him will come to an end.

8. The learned advocate has also drawn my attention to a representation dated 18.12.2002 made to respondent No. 3 objecting to the draft town planing scheme. It

has been submitted by him that the said representation was made on behalf of several residents of the city of Anjar narrating their problems, but unfortunately, the respondent authorities did not consider the objections raised in the said representation and without considering the objections, the preliminary scheme had been sanctioned in pursuance of the notification dated 21.1.2003. It has been submitted by him that the objections incorporated in the said representation ought to have been duly considered by the respondent authorities and by not considering the said objections, the respondent authorities have violated the provisions of the Act.

9. It has also been submitted by him that in addition to the aforestated objections dated 18.12.2003, the petitioner himself had addressed several letters to respondent No. 1, copies of which have been annexed to the petition as Annexures C, D & G. The said representations were also not considered before the preliminary scheme was sanctioned by the respondent authorities.

10. It has been lastly submitted by the learned advocate that looking to the size and shape of Final Plot No. 406, the Shivling might be adversely affected and, therefore, the Shivling will have to be shifted to a different place. Moreover, it would not be possible for those offering their prayers to the idols to have circumambulation of the idols. It has been submitted that the said fact would hurt the religious sentiments of the people visiting the temple.

11. For the aforestated reasons, it has been submitted by the learned advocate appearing for the petitioner that the petition should be allowed and the respondent authorities should be directed either not to make any change in his original plot or to allot F.P. No. 391 to him.

12. In pursuance of notice issued by this court, learned Advocate General Shri S.N. Shelat and learned AGP Ms. M.D. Mehta have appeared for respondents Nos. 2 and 3, whereas learned advocate Shri N.J. Shah has appeared for respondent No. 1.

13. It has been submitted on behalf of the respondents that the temple, which has been referred to by the petitioner in the petition, is a place of worship, which the petitioner is having in his residence. The said temple has not been registered with the Charity

Commissioner or, in other words, it is not owned by any public charitable trust. It has been submitted that the petitioner and other persons might be offering prayers or might be visiting the people, but that would not mean that the petitioner's plot cannot be reconstituted under the town planning scheme, which has been made for the purpose of development of the city in a planned manner. It has been submitted that all the idols are not affected as a result of the town planning scheme. At the most, it has been submitted by the learned advocate, that the Shivling might have to be shifted to another location as it might be affected on account of change being made in the shape of the final plot. It has been submitted on behalf of the respondents that as a result of the town planning scheme, such changes are invariably made. It has been submitted that by virtue of the scheme, there would be planned development of the city and the residents of Anjar will have benefit of better and wider roads. It has been also submitted that in the past construction had been put up by the residents of Anjar City in a haphazard manner, which used to hinder the smooth flow of traffic because the roads were too narrow. Because of the said fact, at the time when the earthquake took place and the buildings had been destroyed, the government authorities could not provide timely help to several citizens as it was not possible for the vehicles of fire brigade or ambulance to access the sites through the narrow roads. In the circumstances, so as to see that the residents of Anjar do not face such problems in future, wider roads have been provided in the scheme.

14. The submission of the learned advocate for the petitioner that the scheme has been made only for the purpose of rehabilitation of persons, who were adversely affected because of the earthquake, is not correct. The learned Advocate General has drawn my attention to notification dated 9th May, 2001, whereby Ajar Area Development Authority had been constituted. In the object cause of the said notification, it has been stated that the town planning schemes were to be made for rehabilitation as well as for better town planing of Anjar city. Thus, the scheme has not only been framed for rehabilitation, but it is also meant for planned development of the city and, therefore, it was obligatory on the part of the respondent authorities to plan for proper development of Anjar city.

15. With regard to the submission that the petitioner should get sufficient land for construction of his residential house, it has been submitted on behalf of the respondents that it is for the petitioner to plan his affairs so as to have his house on the plot, which is

available to him. If the petitioner wants to have a temple in the residential house, he must plan in such a way that he can have his temple as well as his residence. No right of the petitioner can be said to have been abridged simply because the petitioner is not having more space for construction of his residential house. It has been also submitted that the petitioner must make his own arrangement for protection and security of the idols, though normally the state provides police force to protect the property of people, but it is basically for the petitioner to safeguard the property belonging to him.

16. So far as the petitioner's proposal for grant/allotment of F.P. No. 391 is concerned, it has been submitted by the learned advocates appearing for the respondents that if, in fact, there is no claimant of F.P. No. 391, as submitted by the petitioner, as and when ownership of the said final plot is vested in the State, the petitioner may submit his proposal for allotment of the said plot to him, and he being the owner of an adjoining final plot, his proposal might be considered by the concerned authority in accordance with law at an appropriate time.

17. So far as the petitioner's suggestions referred to in Annexure M and other objections referred to at Annexure C, D and G are concerned, it has been submitted that before sanctioning the preliminary scheme under notification dated 21.1.2003, the concerned authority had duly considered the said objections. It has been submitted that the said objections were not found to be just. It has been submitted that simply because the petitioner is losing some land in pursuance of the scheme, he has been aggrieved by implementation of the scheme. It has been submitted that only because the said objections were not accepted by the respondent authorities, it cannot be alleged that the objections were not considered by the authorities.

18. In addition to the aforestated contentions, it has been submitted on behalf of the respondents that as a result of the scheme, the petitioner would be losing 13.99 sq.mtrs. of his land. Thus, the petitioner would be losing 10% of his land, whereas, on an average, other citizens of Anjar have lost more than 15% of their lands in the process of the town planning. As a matter of fact, the petitioner has suffered less than others. It has been also submitted that the respondent authorities have performed their duties well. Therefore, the allegation that the authorities have exercised their

power but have not performed their duties is not correct.

19. Thus, it has been submitted on behalf of the respondents that no legal or fundamental right guaranteed to the petitioner has been violated and, therefore, this petition, under the provisions of Art. 226 of the Constitution of India, is not maintainable and it deserved to be rejected.

20. I have heard the learned advocates at length. Upon considering the arguments advanced by both the parties, I do not find any substance in the petition.

21. It might be true that the temple, which the petitioner is having at his residence, might be of great religions importance. One must not forget the fact that the temple is part of his residence. It does not belong to the public at large. If the petitioner is losing some portion of the land where the Shivling is put up, the petitioner can set up the Shivling at another place within the plot allotted to him. It is not unknown in our society that many temples have been shifted from one place to another as a result of town planning schemes or for some other reason. Simply because the petitioner's religious feelings are slightly affected, it cannot be said that the scheme is improper or unjust. Only because the petitioner is losing some portion of his plot, it cannot be said that the respondent authorities have not performed their duty. It is not their duty to see that original plots and final plots remain the same. Their duty is to ensure that Anjar city is developed in an organized and planned manner and to provide amenities and facilities to the residents of the city. Upon perusal of the plan, it appears that due efforts have been made by the authorities to see that roads are widened so as to give more mobility to the residents. Moreover, places have been reserved for parks, gardens, educational institutions, etc. Such reservation of land would give better quality of life to the citizens. For providing land for such purposes, sometimes an individual may have also to contribute his mite by losing a small portion of his land. As stated on behalf of the respondents, on an average, 15.43% deduction was made in plots owned by private individuals. In the case of the petitioner, the said loss is only to the tune of 10%. Therefore, it cannot be said that the respondent authorities did not perform their duty simply because the petitioner had to lose a small portion of his land.

22. The petitioner's submission that the scheme is only for rehabilitation is also not true. The learned

Advocate General has relied upon the notification, wherein it has been clearly stated that "there has been a vast destruction of human life and property in the area due to devastating earthquake on 26th January, 2001 and speedy implementation of reconstruction and rehabilitation programme is necessary". It is also stated that "with the approach of the monsoon, it has become extremely necessary for the towns to be developed in a systematic manner but with faster implementation of the earthquake rehabilitation programme." The above recital of the object in the aforestated notification clearly denotes that the scheme is not only for rehabilitation, but is also for development in a systematic manner. It has been stated that "This authority is expected to carry out modern planning, repair and reconstruction of the infrastructure plans for new infrastructure and for facilitating the new reconstruction activity in the towns including the towns where temporary shelters have been provided. The authority will have experts on its Board and will rely on expert advise for its decision making." Thus, it is not true that the scheme has been made only for the purpose of rehabilitation.

23. The submission of the learned advocate for the petitioner that he should have sufficient space for construction of his residential house is absolutely irrelevant. The petitioner is an owner of a plot admeasuring 125.02 sq.mtrs. of land. The petitioner must manage his affairs in such a manner that he has his residential house as well as the temple on the said piece of land. Simply because the petitioner wants to have a separate temple in his house, he cannot expect the government authorities to allot him more land than what he was holding. It is open to the petitioner to have his residential house at a different place or he may have a house and he may also set up the temple in his own house. In no way the respondent authorities are responsible for giving more land to the petitioner so as to meet his different needs.

24. So far as allotment of F.P. No. 391 is concerned, it has been also stated on behalf of the respondents that if and when F.P. No. 391 vests in the state, needful will be done at an appropriate time for its disposal or otherwise. Thus, at this juncture, the grievance made by the petitioner cannot be looked into. Moreover, the petitioner has no right to ask the respondent authorities to allot a plot belonging to somebody else. However, as an when the said plot vests in the State, needful can be done at that time for its

allotment.

25. The learned advocate has made several submissions to the effect that the objections filed by him and others were not considered by the respondent authorities before finalising the scheme. There does not appear to be any substance in those allegations. The allegations have been made possibly because the respondent authorities did not accept the suggestions made by the petitioner. Let it be noted that the respondent authorities are experts in the field of town planning, whereas the petitioner is a layman, who has made suggestions so as to serve his own purpose. It is a well-known fact that interest of an individual should always be subordinate to the interest of the public at large. For the betterment of the society, if a citizen is asked to part with some of his property and that too for consideration, no good citizen should ever make a hue and cry about the same.

26. It has been submitted by learned advocate Shri N.J. Shah appearing for respondent No 1 that 13.99 sq.mtrs. of land has been deducted from the original plot belonging to the petitioner and after adjustment of amounts on several counts, in all, a sum of Rs. 25,182/shall be given to the petitioner by way of compensation. The said fact has been duly informed to the petitioner under notice dated 27.5.2003. The said notice has been duly served upon the petitioner. As the notice had been served upon the petitioner after filing of the petition, possibly the petitioner has not made any averment with regard thereto in the petition.

27. It is also pertinent to note that, in the instant case, the petitioner's original plot, which was admeasuring 139.01 sq.mtrs. was of an irregular shape. The said plot had around 10 different corners. The size and shape of his plot were absolutely irregular. As a result of the planning, the petitioner would be given reconstituted plot bearing F.P. No. 406, which is having a definite shape. The said plot is such that it is quite suitable for building purposes. It is pertinent to note that sec. 45 of the Act casts a duty upon the respondent authorities to draft the scheme in such a manner that size and shape of every plot, as far as possible, should be suitable for building purposes. In the instant case, due care has been taken by the authorities to see that the petitioner is given a plot suitable for putting up construction. A map annexed to the affidavit-in-reply of Shri Balvantsinh Chavda, Chief Executive Officer of respondent No. 1, which is at page 52, would show that the plot of the petitioner has been reconstituted in such a manner that the petitioner can

put up construction on the plot in a proper manner. It is also pertinent to note that as a result of allotment of the reconstituted plot, the petitioner would be having frontage of two 6 Mtr. wide roads. Formerly, the petitioner was having frontage of a very small lane which was hardly of 2 M. width on the western side and another absolutely unshapely road on the eastern side. Thus, in fact, the petitioner would be benefited with a very good location upon reconstitution of the plot.

28. For the reasons stated hereinabove and more particularly in view of the fact that no legal or fundamental right of the petitioner has been violated by any of the respondents, the petition deserves to be rejected and is accordingly disposed of as rejected. Notice is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated.

(A.R. Dave, J.)
(hn)